No. 684

In the Supreme Court
OF THE
United States

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Plaintiffs in Error,

vs.

JAMES ROLPH COMPANY (a corporation), et al.,
Defendants in Error.

BRIEF ON BEHALF OF DEFENDANTS IN ERROR.

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Statement of the Case.

The question involved in this case is the constitutionality of the Act of Congress of June 10, 1922, which attempted to deprive a class of maritime workers of rights conferred upon them by the Maritime Law and to substitute therefor the benefits of state compensation laws administered exclusively by state industrial commissions.

The Supreme Court of California, following the decisions (hereinafter cited) of a number of both state and federal tribunals, declared said act to be unconstitutional.

The California court held that the Amendment of 1922 was more objectionable than the Amendment of 1917, which this court in *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, held unconstitutional. The law as amended, said the court, was

> "more repugnant than it was before the last amendments, for the reason that it is discriminatory and attempts to deprive the Federal courts of jurisdiction over certain admiralty and maritime cases while vesting them with jurisdiction in others."
>
> *James Rolph Company, et al. v. Industrial Accident Com., etc., et al.*, 66 Cal. Dec. 575; .....Pac.....

Counsel for plaintiffs in error has filed an elaborate brief in which he asks this court to reconsider a number of its own decisions rendered after prolonged, careful and exhaustive consideration of the questions therein determined, because, as we understand him, these decisions were concurred in by only a "bare majority" of the court. Nevertheless, these adjudications are the decisions *of the court*, and we do not understand that merely because some of the members of the court at the time the cases were decided entertained views at variance with the views of the court, these decisions are any less authoritative and binding. It has not heretofore been considered that every litigant dissatisfied with the reasoning of a court of last resort may require it to reconsider its well considered and authoritative rulings. The rule of *stare decisis* of course controls with respect to the matters here involved. And for this

reason we shall decline to follow counsel in his many ramifications pursued with a view to undermining the decisions of this court by "going behind" them, which decisions the Supreme Court of California, and other state and federal tribunals have regarded as correctly declaring the law and as binding upon them. And in this connection it is to be observed that the Supreme Court of California, prior to the decision of this court in *Knickerbocker Ice Co. v. Stewart, supra,* reached the same conclusion arrived at by this court. See

Sudden, et al., v. Industrial etc. Commission, 182 Cal. 437; 188 Pac. 803.

But counsel, undeterred by these considerations, again advances arguments repeatedly held by these authoritative adjudications to be untenable, and asks that his own views and opinions be accepted as correct and convincing expositions of the law. He may be right, but we prefer to take the law as declared by this court, and accordingly shall pass over without comment such parts of counsel's argument as do not relate to the question of the validity of the Amendment of 1922, regarding it as a settled proposition that the Act of 1917, as ruled by this court and the Supreme Court of California, is invalid.

Argument.

I.

THE ACT AS AMENDED IN 1922 IS MORE OBJECTIONABLE THAN THE ACT OF 1917.

The Supreme Court of California so held, pointing out that the law as amended was

> "more repugnant than it was before the last amendments, for the reason that it is discriminatory and attempts to deprive the Federal courts of jurisdiction over certain admiralty and maritime cases while vesting them with jurisdiction in others."

Counsel argues that the deceased, a stevedore, was not engaged in a maritime occupation within the meaning of the Constitution. But this question was considered and decided by this court in the case of *Southern Pacific Co. v. Jensen*, 244 U. S. 205, following the case of *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, in which latter case *certiorari* was issued because of a divergence of views between the Courts of Appeals of the Second and Ninth Circuit, and in which case, after full consideration and exhaustive arguments and having in mind the conflicting views entertained by the lower tribunals, this court held that stevedoring was a maritime occupation and that stevedores injured on vessels in navigable waters were entitled to maritime rights and remedies as fully as members of a vessel's crew; that the work which stevedores perform is essentially maritime in its nature, though now performed by a special class of workers. We do not apprehend that

this court will, the circumstances considered, at this late date be disposed to reinvestigate the subject and to reconsider the arguments made *pro* and *con* in the *Imbrovek* case. We take it that the views expressed so clearly and forcibly by Mr. Justice Hughes in that case, and concurred in by all of the other justices of this court, will be regarded as final and conclusive so far as the case at bar is concerned. This being postulated it necessarily follows that the Amendment of 1922 is invalid because, as the Supreme Court of California pointed out, it is more objectionable than the earlier amendment. The new amendment selects a particular class of maritime workers, or rather it leaves to the courts to discover just what maritime workers remain after deduction of the "master and crew". Upon this vaguely defined class of maritime workers Congress sought to confer certain "benefits" varying with the laws of the different states and to deprive this class of clearly defined and uniform rights and remedies conferred on them by the maritime law. No reason is conceivable why a *sailor* (as often happens) engaged in loading or unloading a vessel should be deprived of so-called "compensation", if other workers *doing precisely the same work* are entitled to receive such "compensation". If the act had provided that *every maritime worker injured while engaged in loading or unloading* should be entitled to compensation, the case would be different. But to deprive a member *of the "crew"* of "compensation" merely because part of *his* duties happened to be

performed by a class of maritime workers who are not technically "seamen", is certainly a manifest and grossly unjust discrimination. A "seaman" who performs the *maritime* work of a stevedore is assuredly as much entitled to "compensation" as the stevedore himself. As Mr. Justice Hughes points out, for economic reasons the work formerly done by the sailors themselves is now done by stevedores. But if because of burdens imposed by law upon employers of stevedores ship owners and operators find it more economical under the changed conditions to do their own loading and unloading, they will of course cease to have it done by stevedores, who will then have to hunt new jobs. The bestowal of so-called "compensation" would be poor *compensation* for loss of their occupations.

The trouble with most of these so-called "humanitarian" measures, fathered by popularity-seeking politicians, is that they fail to take into account *natural economic laws*. The *reductio ad absurdum* of this propensity, is that each of us shall be favored with special privileges at the expense of all of us. The folly of such measures has been time and again exposed by disinterested and competent students of such problems. It is of course quite easy to provide "benefits" for the unfortunate and to give such enactments the color of delayed recognition of *just claims;* provided, of course, that no obligation is incurred by those who pass these bills to *pay* them. It is to be regretted that our legislators should be disposed so easily to depart from sound principles

of right and justice, upheld by our Constitution, leaving charity to be administered by private benevolence. Instead they are constantly seeking to develop new avenues for bestowal of unearned "benefits" upon large and politically influential factors of the body politic.

On the other hand, it is a matter of comfort and congratulation that this court has always been a staunch bulwark against these attempts to unsettle the funadmental principles upon which our government rests and true progress depends. *Ad captandum* legislation enacted by demagogues for political reasons, violative of constitutional guaranties, have invariably been declared by this court to be nullities.

But despite this fact, scheming and selfish politicians continue their attempts to delude the public by proposing the bestowal of "benefits" upon particular classes at heavy cost to the tax-paying public, and incidentally to provide lucrative positions for their political retainers. Unfortunately many of the electorate are incompetent to detect the fallacies concealed in such proposals. Their attitude of mind recalls the case of a certain princess who expressed surprise that poverty should exist while it was so easy for the government to provide money for everybody. And, as in the case at bar, attempts are made to influence the courts by the suggesting that each new so-called "humanitarian" measure is in line with "progressive" and enlightened public policy.

Upon the plea that unless something is done *by public instrumentality* for the unfortunate, negligent or incompetent, they will become "charges" on the state, political bureaus are being multiplied, their aim being the repeal of the inexorable laws of nature which rigidly attach consequences to conduct; trying, as Herbert Spencer pointed out, "to supersede with their clumsy mechanisms the great laws of existence." The next move in line with this socialistic drift will be the abolition of punishment of crime on the theory that criminals are the "victims of society" and that "society" should see to it that crime be not committed lest the criminals become a "charge" on it.

This "humanitarian" tendency is absolutely opposed to the natural and constitutional principle that laws must be just and that charitable considerations are entirely without their scope. Justice and charity occupy different spheres and attempts to unite them in one results in the ruin of both.

Counsel for plaintiff in error has not cited a single case which sustains the validity of the 1922 Amendment. All of the courts which have had occasion to consider the question have reached the same conclusion as the Supreme Court of California. See

State v. W. C. Dawson & Co., 211 Pac. 724 (Wash.);

State v. W. C. Dawson & Co., 212 Pac. 1059 (Wash.);

Farrell v. Waterman S. S. Co., 286 Fed. 284;
The Canadian Farmer, 290 Fed. 601;
Farrell v. Waterman S. S. Co., 291 Fed. 604.

The fact that this is a death case is immaterial. The *Jensen* case, *supra*, was also a death case and the same point was urged on behalf of the claimant in that case.

It is true that state statutes conferring a right of action for death have been recognized and enforced in admiralty, but certainly had such statutes provided that only *state courts* could award such relief *in admiralty cases*, such provision would have been held invalid. Conceding a right in admiralty in a death case, *the Federal courts may not be deprived of jurisdiction to award the relief*. Now this is precisely what is attempted to be done by the Amendment of 1922. Jurisdiction is removed from the Federal courts and conferred upon the State courts and commissions.

Furthermore, it cannot be presumed that Congress would have legislated for death cases only. It would not have provided for relief in case of *death*, but not in case of *injury*. The statute must be considered *as a whole* because it deals with a single comprehensive scheme. As a whole it is invalid and hence every part of it must be regarded as invalid; the subject matter, meaning and purpose of the entire act are such that it cannot be presumed that

Congress would have provided a remedy for death and not for injury. See

36 *Cyc.* 977;

Hill v. Wallace, 259 U. S. 44; 66 L. Ed. 822;

U. S. v. Reese, 92 U. S. 214; 23 L. Ed. 563;

Trade-Mark cases, 100 U. S. 82; 25 L. Ed. 550;

Employers' Liability cases, 207 U. S. 463; 52 L. Ed. 297;

Butts v. M. & M. Transp. Co., 230 U. S. 126; 57 L. Ed. 1422;

James v. Bowman, 190 U. S. 127; 47 L. Ed. 979.

In the *Trade-Mark* cases, *supra*, the court said (p. 99):

> "If we should, in the case before us, undertake to make, by judicial construction, a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the act of Congress, and in others under state law. Cooley, Const. Lim., 178, 179; Com. v. Hitchings, 5 Gray 482."

Repeatedly throughout his brief counsel cites the case of *Clark Distillery Co. v. Western Maryland Railroad Co.*, 242 U. S. 311, as sustaining his position. But unfortunately for counsel this court, in *Knickerbocker Ice Co. v. Stewart*, *supra*, and the Supreme Court of California in the *Sudden &*

Christensen case, *supra,* have both held this contention to be unsound. However, he pays no more attention to the authoritative and responsible adjudications of these tribunals than he would to the utterances of a soap-box orator.

Counsel says that,

> "In the *Knickerbocker Ice Company* case, this court suggests that the 1917 Act of Congress involved a delegation of legislative power to the states. The Court was apparently here speaking of a statute in which the maritime law was stated to have been left in the field but claimants were authorized to elect between a claim under the state workmen's compensation act or the maritime law. This indirectly gave to the states the power to supersede applicable rules of the maritime law by their own statutes. This situation does not exist in the present case. By the 1922 Act, State workmen's compensation acts are made exclusive where applicable. In states having such acts there is no maritime law to conflict with the state powers. Where the state can make its rules applicable to maritime matters it does so under its own police power and not through the grant of any authority from Congress to legislate."

So much the worse for the 1922 amendments, for they *absolutely* deprive maritime workers of admiralty rights and remedies and also deprive the Federal courts of all jurisdiction in the premises.

Counsel also says that,

> "It is well established by the authorities that the inferior Federal Courts can exercise no jurisdiction not conferred upon them by specific acts of Congress and that Congress is not

> compelled to confer the entire judicial power of the United States upon the Courts created by it. The jurisdiction of the inferior Federal Courts is statutory only.
>
> The 'saving clause' contained in Section 24 and 256 Judicial Code is complete proof of this. By it, Congress has given to the state courts concurrent jurisdiction over all maritime matters against proceedings *in rem*, and brig cases. If the Federal constitution confers *exclusive* jurisdiction upon the Federal Courts in admiralty matters, the State courts have been exercising an illegal jurisdiction for 134 years."

The answer to this is of course that the 1922 Amendment not only deprives maritime workers of maritime rights and remedies, but it also deprives the Federal courts of jurisdiction with respect to the substituted rights and remedies attempted to be conferred upon such workers and confers jurisdiction with respect thereto to state tribunals.

Section 2 of Article III of the Constitution of the United States provides that the judicial power of the United States "shall extend to * * * all cases of admiralty and maritime jurisdiction". It is to be noted that the framers of the Constitution have used in that section the word "all". The 1922 amendments would leave to the United States courts jurisdiction in *certain only* of admiralty cases. We submit that Congress is without power to limit that jurisdiction. Within its power to declare and define the maritime law, Congress might be authorized to declare certain claims non-maritime thereby removing them from admiralty jurisdiction but with

such possibility we are not here concerned. In the 1922 amendments Congress has said that with respect to a class of maritime claims the district courts may take jurisdiction if there is no compensation act but not if there be. This we contend is beyond the power of Congress. The "exclusive jurisdiction" of the Federal courts does not, as counsel states, come from the Judiciary Act, but comes from the constitutional provision which gives to the Federal courts jurisdiction over "*all* cases of admiralty and maritime jurisdiction", and this limitation is carried forward into the Judiciary Act of 1789 and the Federal Judicial Code from *the Constitution itself*. See

Farrell v. Waterman S. S. Co. 291 Fed. 604, decided July 24, 1923. In this opinion the court elaborates upon its former opinion in the same case, reported in 286 Fed. 284, discusses the derivation of the power of Federal courts over admiralty and maritime matters, and concludes,

> "When exclusive jurisdiction is given by the Constitution, the Congress cannot limit or restrict this jurisdiction."

The power given Congress by Article I, Section 8 of the Constitution to legislate with respect to admiralty and maritime matters must be considered in the light of Article III, Section 2, which vests judicial power in the *Federal* courts over "all cases of admiralty and maritime jurisdiction." Any congressional enactment which conflicts with this provision is of course a nullity.

The 1917 amendments attempted to give to claimants *in addition* to their *remedies* under the maritime rules and their common law remedies, *rights* under workmen's compensation acts. This was held to be beyond the scope and function of a "saving clause." But the Act of June 10, 1922, goes even further. It attempts to *force* these *rights* under state workmen's compensation acts upon claimants as an *exclusive* remedy, and to *deprive* the Federal courts of the jurisdiction guaranteed to them over admiralty and maritime cases by the constitution and to *confer* that jurisdiction upon state industrial commissions.

Counsel states that Congress may give less than the full jurisdiction authorized by the Constitution or can refrain from conferring jurisdiction in admiralty upon any Federal court, or can withdraw in whole or in part jurisdiction already conferred. Assuming this to be true, still if Congress attempts to *confer* jurisdiction in maritime matters *upon a tribunal other than a Federal court* it has contravened the constitutional provision. The question involved here is not whether Congress can increase or diminish the maritime jurisdiction of district courts, but whether it can give jurisdiction to *other than a Federal tribunal* and the constitutional provision referred to declares that it cannot. The case of *Carr v. S. S. Sorland*, 1 American Maritime cases 158, relied on by plaintiffs in error is not in point. In that case a libel filed in admiralty in the United States District Court, Eastern District of Virginia, was upon exceptions thereto dismissed by the court

upon the ground that the 1922 amendments to Sections 24 and 256 of the Federal Judicial Code exclude the jurisdiction of the District Court in such cases. But, the court adds:

> "Whether Congress may, constitutionally, confer jurisdiction on the state courts, * * * is a question which is not in issue in this controversy, and can only be raised by objection to the enforcement of a decree of the State Court or of the Industrial Commission."

The case, therefore, is not authority upon the issue involved in this case, i. e., whether the enactment of Congress attempting *to confer jurisdiction upon the Industrial Accident Commission of California* is constitutional.

II.

THERE WAS NO ELECTION ON THE PART OF THE EMPLOYER TO BRING ITS EMPLOYEES UNDER THE CALIFORNIA COMPENSATION ACT.

The Supreme Court of California so held in the case at bar (66 Cal. Dec. 575; ..... Pac. .....), basing its ruling upon a prior decision to the same effect in the case of *Zurich etc. Co. v. Industrial Accident Commission*, 218 Pac. 563.

This ruling, involving the construction and not the validity of a state statute, as to a state matter, is of course conclusive on this court.

> *Quong Ham Wah Co. v. I. A. C. of California, et al.*, 255 U. S. 445; 65 L. Ed. 724;

Erie R. R. Co. v. Hamilton, 248 U. S. 369, 371-2; 63 L. Ed. 307;

Stadelman v. Miner, 246 U. S. 544; 62 L. Ed. 875;

Ireland v. Woods, 246 U. S. 323, 330; 62 L. Ed. 745;

Johnson v. N. Y. Life Ins. Co., 187 U. S. 491, 496; 47 L. Ed. 273;

Comm. Bank v. Buckingham, 5 How. 317, 342; 12 L. Ed. 169.

Nor, aside from this consideration and the reasons given by the Supreme Court of California in the *Zurich Co.* case, *supra,* in support of its judgment, is there any merit whatever in this contention *with respect to the case at bar.* For this reason: The policy of insurance issued in this case expressly protected the employer against liability either under the Compensation Act *or under the maritime law.* The employer desired protection against both contingencies and his insurer issued a policy to him which provides for payment of either compensation or damages as the case may be. A stevedore injured on the dock is entitled to compensation. Hence the employer purchased insurance covering such contingency. He also purchased insurance covering the contingency of liability under the maritime law for injury or death sustained by employees working on vessels in navigable waters. There was no "election" on the part of the employer to bring his employees under the compensation law or any other law. He merely secured protection for him-

self against any liability that any employers' law imposed upon him. Thus the entire foundation is removed from the argument based upon the assumption of an "election" on the part of the employer.

Dated, San Francisco,
December 29, 1923.

Respectfully submitted,

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